# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1927

No. 33

ARTHUR C. BROWN

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FILED OCTOBER 22, 1927

(31,782)

# (31,782)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1927

# No. 33

ARTHUR C. BROWN

*vs.*

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX


| | Original | Print |
|---|---|---|
| Order to send up entire record and cause | a | 1 |
| Record from district court of the United States, northern Illinois | 1 | 1 |
| Presentment of grand jury | 1 | 1 |
| Subpœna duces tecum | 1 | 1 |
| Statement of Arthur C. Brown | 3 | 3 |
| Request that Arthur C. Brown be compelled to comply with requirements of subpœna | 4 | 4 |
| Answer | 4 | 4 |
| Order that Arthur C. Brown appear before grand jury | 7 | 7 |
| Presentment of grand jury | 8 | 7 |
| Judgment | 9 | 8 |
| Petition for writ of error | 10 | 9 |
| Assignments of error | 12 | 11 |
| Bond on writ of error (omitted in printing) | 13 | |
| Order allowing writ of error | 15 | 12 |
| Writ of error | 16 | 13 |
| Praecipe for transcript of record | 17 | 14 |
| Clerk's certificate (omitted in printing) | 18 | |
| Citation and service (omitted in printing) | 19 | |
| Proceedings in the United States circuit court of appeals, seventh circuit | 20 | 15 |
| Clerk's certificate (omitted in printing) | 29 | |
| Certificate to Supreme Court U. S. (omitted in printing) | 29 | |


JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 2, 1927

ls. a & b]

## SUPREME COURT OF THE UNITED STATES

DER TO SEND UP ENTIRE RECORD AND CAUSE—October 24, 1927

t is ordered that, in accordance with section 239 of the dicial Code, as amended by the act of February 13, 1925 229, 43 Stat. 936), the entire record in this cause be cer- d up to the Court so that the whole matter in con- versy may be considered by the Court, and this cause is eby set down for hearing on the first Tuesday of Janu- next.

---

l. 1] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

re ARTHUR C. BROWN, a Witness Before the Grand Jury

**Presentment of Grand Jury**—Filed July 17, 1925

The grand jurors for the United States, empaneled and rn in said court at said term, upon their oath present, t a subpœna duces tecum of the tenor following, to wit:

SUBPŒNA DUCES TECUM

United States Subpœna Duces Tecum

No. 1727, July Term, 1925

The United States Grand Jury

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

President of the United States of America to National lliance of Furniture Manufacturers, Grand Rapids Sav- gs Bank Building, Grand Rapids, Michigan:

ou are hereby commanded that laying aside all and gular your business and excuses, you be and appear be- the Grand Jury of the District Court of The United

States for the Northern District of Illinois, in the Federal Building, in the City of Chicago in said District on the 17th day of July, A. D. 1925, at 10 o'clock A. M. of said day, and also that you bring with you and produce at the time and place aforesaid

All letters or copies of letters, telegrams or copies of telegrams, incoming and outgoing, passing between the National Alliance of Furniture Manufacturers and its pre- [fol. 2] decessor, the National Alliance of Case Goods Associations, their officers and agents, and the several members of said National Alliance of Furniture Manufacturers and its predecessor, the National Alliance of Case Goods Associations (including corporations, partnerships, and individuals, and their respective officers and agents) during the period from January 1, 1922, to June 15, 1925, relating to the manufacture and sale of case goods, and particularly with reference to—

(a) general meetings of Alliance
(b) zone meetings of Alliance members
(c) costs of manufacture
(d) grading of various types of case goods
(e) issuing new price lists
(f) discounts allowed on price lists
(g) exchanging price lists
(h) maintaining prices
(i) advancing prices
(j) reducing prices
(k) rumors of charges of price cutting
(l) discounts, terms and conditions of sale, etc.,
(m) curtailment of production,
(n) The pricing of certain articles or suits of furniture by W. H. Coye
(o) Cost bulletins
(p) Intention of W. H. Coye and A. C. Brown to attend furniture markets or expositions at Jamestown, N. Y., Grand Rapids, Mich., Chicago, Ill., and New York City, N. Y., and meetings of members held prior to and during said furniture markets or expositions.
(q) Conditions obtaining at various furniture markets or expositions at Jamestown, N. Y., Grand Rapids, Mich., Chicago, Ill., and New York City, N. Y.

(r) Manufacturers maintaining a fair margin of profit between cost prices and selling prices.

on behalf of the United States, and not depart the court without leave thereof or of the District Attorney.

Hereof fail not under penalty of what may befall you thereon.

To the Marshal of the Western District of Michigan to execute and return in due form of law.

Witness, the Honorable George A. Carpenter and the Honorable James H. Wilkerson and the Honorable Adam C. Cliffe, District Judges of the United States, this 13th [fol. 3] day of July, A. D. 1925, and in the 150th year of the Independence of the United States of America.

Charles M. Bates, Clerk. (Seal.)

was duly served upon said National Alliance of Furniture Manufacturers, a voluntary organization of furniture manufacturers selling and shipping their products in interstate commerce, by service of the same upon said Arthur C. Brown, at Grand Rapids, Michigan, by the United States Marshal for the Western District of Michigan, to whom the same was directed for service, said Arthur C. Brown being Secretary of said National Alliance of Furniture Manufacturers; that on this 17th day of July, 1925, said Arthur C. Brown appeared in person before said grand jurors at Chicago aforesaid and refused to say anything concerning the matters mentioned in said subpœna unless he should first be "subpœnaed and sworn", at the same time producing and reading to the grand jurors a writing of the tenor following, to wit:

STATEMENT OF ARTHUR C. BROWN

GENTLEMEN OF THE GRAND JURY: There has been served upon me a subpœna dated July 13, 1925, ordering National Alliance of Furniture Manufacturers to appear on July 17, 1925, before your honorable body in Chicago.

There is no such person or entity as National Alliance of Furniture Manufacturers which is capable of being served with a subpœna or of appearing here in answer to one. I have appeared here today, in deference to your official position, to inform you of that fact.

and refused to say, when asked, whether his refusal to comply with said subpœna was because so to do would incriminate him in connection with his private and personal affairs or not; whereupon counsel for the Government stated to said Arthur C. Brown that the requirements of the subpœna were not with reference to the private or personal affairs of him the said Arthur C. Brown and that said requirements concerned him the said Arthur C. Brown only as he was connected with the affairs of said National Alliance of Furniture Manufacturers; but said Arthur C. Brown still refused to comply with said subpœna without being personally subpœnaed and sworn before said grand jury, and refused to say whether or not he had complied with said subpœna so far as to bring the documents mentioned therein with him to Chicago.

[fol. 4] REQUEST THAT ARTHUR C. BROWN BE COMPELLED TO COMPLY WITH REQUIREMENTS OF SUBPŒNA

Wherefore said grand jurors, because, as they say, the evidence called for in said subpœna is important and material to an inquiry now being conducted by them concerning violations of the anti-trust laws of the United States by said furniture manufacturers, present said Arthur C. Brown to this honorable court as a contumacious witness, and respectfully request that the steps be taken to compel him forthwith to comply with the requirements of said subpœna.

F. M. Bowes, Foreman.

Chicago, Ill., July 17, 1925.

[File endorsement omitted.]

---

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed July 18, 1925

Arthur C. Brown, for answer to so much of the petition of the grand jury as he is advised it is necessary for him

to answer, denies that he is or was a witness before the grand jury for the present term.

Said Arthur C. Brown admits that on, to-wit July 14, 1925, the subpœna duces tecum alleged in said petition was handed to him by the United States Marshal or a Deputy Marshal for the Western District of Michigan; that he, the said Brown, then examined said document and noticed that it commanded the National Alliance of Furniture Manufacturers to be and appear before the grand jury, as is set forth in said subpœna; that he, the said Brown, thereupon came from Grand Rapids, Michigan, to Chicago, Illinois, and on July 17, 1925, appeared in person before the grand [fol. 5] jury; that he, the said Brown, thereupon made to the grand jury the statement alleged in the petition, to the effect that there is no such person or entity as Nation Alliance of Furniture Manufacturers which is capable of being served with a subpœna or of appearing in answer to one; that thereupon special assistant to the attorney general Pagan, present before the grand jury, asked him, the said Brown, a number of questions, all and each of which he, the said Brown, declined to answer as he had not been subpœnaed to appear and testify before the grand jury.

Said Arthur C. Brown further states that National Alliance of Furniture Manufacturers is the name assumed by a voluntary oragnization of furniture manufacturers and that said organization is not a corporation either de jure or de facto.

Said Arthur C. Brown further states that he is informed and believes and upon such information and belief states that the matter now under investigation by the grand jury is exactly the same matter as was investigated by a previous grand jury, which returned to this Court, on May 29, 1925, indictment No. 13663, in which he, the said Brown, was and is named as a defendant and that he, the said Brown, was indicted "not with reference to the private or personal affairs of him the said Arthur C. Brown," but "only as he was connected with the affairs of "said voluntary organization.

Said Arthur C. Brown further states that on, to wit, June 19, 1925, he, the said Brown, was duly served with a subpœna duces tecum directed to him, the said Brown, commanding him to be and appear before the grand jury at Chicago aforesaid on July 7, 1925, and to have with him certain

documents which said subpœna described in the identical words and figures as the subpœna set forth in said petition; that, in answer to said subpœna, he, the said Brown, did appear at the said time and place and that he did take into the room occupied by the grand jury, and before the grand jury, the documents so requested, but that thereupon special assistant to the attorney general Shale asked him, the said Brown, certain questions which he declined to answer unless sworn as a witness; that thereupon he, the said Brown, was excused from further attendance by said Shale.

Said Arthur C. Brown further states that, said organization being a voluntary one and not a corporation, to compel him, the said Brown, being now under indictment as aforesaid and the subject of a grand jury investigation, to produce documents in his possession in response to the [fol. 6] subpœna set forth in said petition would be to disregard his constitutional rights, privileges and immunities, to compel him to produce evidence against himself, in violation of Amendment V to the Constitution and to submit to an unlawful search and seizure in violation of Amendment IV to the Constitution in that said subpœna fails to show that the documents described therein are important or material, that said subpœna is a blanket command to produce all letters or copies of letters and telegrams sent to or received from a large number, to wit, 192 persons during a period of three years, five and one half months, and calls for many documents which are obviously harmless and of no evidentiary value and that said subpœna is not a bona fide attempt to obtain evidence to which the United States or the grand jury is entitled but is and constitutes a fishing expedition, undertaken without knowledge of whether or not he, the said Brown, has in his possession evidence desired by the United States or the grand jury, but undertaken in the hope that evidence may be discovered which can be used against him, the said Brown on his trial under the said indictment or under a new indictment.

Said Arthur C. Brown further states that his actions, now by the grand jury complained of, did not result from any contempt by him had of this honorable court or of the grand jury.

Arthur C. Brown.

*Duly sworn to by Arthur C. Brown. Jurat omitted in printing.*

[File endorsement omitted.]

---

[fol. 7] In United States District Court

[Title omitted]

Order that Arthur C. Brown Appear Before Grand Jury—July 18, 1925

The matter of the presentment of the grand jury, dated July 17, 1925, in the above entitled cause having on this 18th day of July, 1925, been considered by the court, said Arthur C. Brown being present in court in person and represented by his counsel, Weymouth Kirkland, Esq., the court finds that said Arthur C. Brown presents no sufficient excuse in law for his refusal and failure to produce before the grand jury of this court the documentary evidence called for in said subpœna duces tecum, and therefore orders and directs said Arthur C. Brown forthwith to appear before said grand jury in obedience to said subpœna and there produce the evidence called for in said subpœna and mentioned in said presentment, whether or not said grand jury sees fit to administer an oath to said Arthur C. Brown in that behalf.

Adam C. Cliffe, District Judge.

---

[fol. 8] In United States District Court

[Title omitted]

Presentment of Grand Jury—Filed July 18, 1925

The grand jurors for the United States, empaneled and sworn in said court at said term, upon their oath further present, that said Arthur C. Brown came again in person before said grand jurors on this 18th day of July, 1925, in obedience to the order of said court of July 18, 1925, and,

being again asked to produce before said grand jurors the documentary evidence called for in the subpœna duces tecum set forth in full in the former presentment of him to this court, dated July 17, 1925, as a contumacious witness in that on that day he appeared before said grand jurors and failed and refused to comply with the requirements of said subpœna, said Arthur C. Brown, in the same manner and on the same conditions as to being "subpœnaed and sworn," as on said July 17, 1925, he did, again refused and failed to produce said evidence before said grand jurors in obedience to said subpœna.

Wherefore, said grand jurors, because, as they again say, said evidence called for in said subpœna is important and material to said inquiry now being conducted by them concerning violations of the anti-trust laws of the United States by the furniture manufacturers in said presentment of July 17, 1925, mentioned, again present said Arthur C. Brown to this honorable court as a contumacious witness, and respectfully request that he be proceeded against in the name of the United States as for criminal contempt for his last mentioned refusal and failure to comply with the requirements of said subpœna.

F. M. Bowes, Foreman.

[File endorsement omitted.]

---

[fol. 9] In United States District Court

United States

vs.

Arthur C. Brown

Criminal Contempt

Judgment—July 18, 1925

It appearing to the court that the above named Arthur C. Brown appeared in person before the grand jury of this court, empaneled and sworn at this term, to wit, on July 17, 1925, in obedience to a subpœna duces tecum requiring him to produce before said grand jury certain documentary evi-

dence in said subpœna mentioned, and there refused and failed to comply with the requirements of said subpœna; that said Arthur C. Brown on this July 18, 1925, was presented by the grand jury to the court for his refusal and failure aforesaid; that after a hearing in said matter before the court an order was entered directing said Arthur C. Brown to appear again before said grand jury and there comply with the requirements of said subpœna; that thereupon said Arthur C. Brown again appeared before said grand jury and again refused and failed to comply with the requirements of said subpœna by producing said evidence before said grand jury; that thereupon said grand jury again presented to the court the matter of such refusal and failure; and that said Arthur C. Brown, being now present in court in person and by his attorneys Weymouth Kirkland and Robert Golding, and having again refused to comply with the requirements of said subpœna, it is therefore [fol. 10] ordered and adjudged by the court that said Arthur C. Brown stands in contempt of the court for his said refusal and failure, and that, for such contempt, he be imprisoned in the common jail of Cook County, in this district for and during the period of thirty days, or until he complies with the requirements of said subpœna; whereupon an exception was noted by his said attorneys to the action of the court in so finding said Arthur C. Brown guilty of contempt and sentencing him as aforesaid, and is allowed.

And, upon motion of said Arthur C. Brown, by his said attorneys, it is further ordered that the execution of said order and judgment be stayed until July 25, 1925.

Adam C. Cliffe, District Judge.

---

In United States District Court

[Title omitted]

Petition for Writ of Error—Filed July 25, 1925

Now comes Arthur C. Brown, petitioner, and respectfully shows that on a presentment filed in said district court by the grand jury, said district court did, on July 18, 1925, order petitioner to appear and to produce before said grand

jury certain documentary evidence called for in a subpœna duces tecum, as set forth in said presentment, and that thereafter, on July 18, 1925, upon a second presentment by said grand jury, said district court did adjudge petitioner to be in contempt and did sentence petitioner to be imprisoned in the common jail of Cook County for and during a period of thirty days or until he, the peti- [fol. 11] tioner, complies with the requirements of said subpœna.

And your petitioner respectfully shows that in said judgments and the proceedings had prior thereto in the above entitled cause, certain errors were committed to the prejudice of your petitioner, all of which will appear more in detail by the assignment of errors which is filed in this court by your petitioner, together with this petition.

Wherefore your petitioner, the said Arthur C. Brown, prays that a writ of error may issue in his behalf to said district court out of the United States Circuit Court of Appeals for the Seventh Circuit, for the correction of the errors so complained of; and that said writ of error may be made a supersedeas as to your petitioner, and that your petitioner may be admitted to bail pending the determination of said writ of error; and that the further proceedings in said district court may be superseded and stayed and that all further necessary orders or processes may be made or stayed, to the end that the errors complained of may be corrected by the said United States Circuit Court of Appeals for the Seventh Circuit, and that said judgments and sentences may be set aside and held for naught.

Your petitioner further prays that a citation in due form of law may issue requiring the United States of America, the defendant in said writ of error, to appear in said United States Circuit Court of Appeals for the Seventh Circuit and then and there to make answer to the said assignment of errors made by your petitioner upon the record in the proceedings in said cause; and your petitioner herewith presents his assignment of errors, in accordance with the rules of the said United States Circuit Court of Appeals for the Seventh Circuit and the course and practice in said district court.

And your petitioner, said Arthur C. Brown, prays that an order may be entered in his behalf directing the clerk of said

district court to make return of said writ of error respectfully prayed for by your petitioner by transmitting to the said United States Circuit Court of Appeals for the Seventh Circuit a single true copy of the record in the above entitled cause, said assignment of errors, this petition for writ of error, and the other proceedings had in said district court in the above entitled cause necessary to the hearing of said [fol. 12] writ of error in said United States Circuit Court of Appeals for the Seventh Circuit.

Arthur C. Brown, Petitioner. Weymouth Kirkland, Robert N. Golding, Attorneys for Petitioner.

[File endorsement omitted.]

---

In United States District Court

[Title omitted]

Assignment of Errors—Filed July 25, 1925

Now comes Arthur C. Brown, defendant in the above entitled cause, and in connection with his petition for a writ of error herein says that in the record and proceedings prior to and during the hearing of the above entitled cause in the said district court, error has intervened to his prejudice and he makes the following assignment of errors, which he, the said Arthur C. Brown, avers occurred on the trial of said cause, to wit:

1. Said district court erred in receiving the presentment of the grand jury filed July 17, 1925;

2. Said district court erred in finding on the presentment of the grand jury filed July 17, 1925, and on the answer of the said Arthur C. Brown thereto, that said Arthur C. Brown in said answer presented no sufficient excuse in law for his refusal and failure to produce before the grand jury [fols. 13 & 14] the documentary evidence called for in the subpœna duces tecum described in said presentment.

3. Said district court erred in entering its order of July 18, 1925, ordering and directing said Arthur C. Brown to

appear before said grand jury in obedience to said subpœna and there to produce the evidence called for in said subpœna.

4. Said district court erred in receiving the presentment of the grand jury filed July 18, 1925.

5. Said district court erred in finding on said presentment so filed on July 18, 1925, that Arthur C. Brown, by his refusal to produce said evidence before said grand jury, stood in contempt of said court.

6. Said district court erred in entering its order of July 18, 1925, whereby it adjudged said Arthur C. Brown to be in contempt of said court, and whereby it directed him to be imprisoned in the common jail of Cook County for and during the period of thirty days, or until he, the said Brown, should comply with the requirements of said subpœna.

Wherefore, the said Arthur C. Brown, by reason of the errors aforesaid, prays that the said judgments and sentences against and upon him, the said Arthur C. Brown, may be reversed and held for naught.

Arthur C. Brown, petitioner. Weymouth Kirkland, Robert N. Golding, Attorneys for Petitioner.

[File endorsement omitted.]

---

Bond on writ of error for $5,000, approved and filed July 25, 1925, omitted in printing.

---

[fol. 15] In United States District Court

[Title omitted]

Order Allowing Writ of Error—July 25, 1925

Now on this 25th day of July A. D. 1925, come the parties by their attorneys, and Arthur C. Brown, defendant and petitioner, in person, and on motion of said Arthur C. Brown, by his attorneys, and upon filing his petition for a writ of error and his assignment of errors.

It is Ordered by the court that a writ of error be and hereby is allowed to said Arthur C. Brown to have reviewed in the United States Circuit Court of Appeals for the Seventh Circuit the judgments of this court entered on July 18, A. D. 1925.

It is Further Ordered by the court that the amount of the bond on said writ of error be and it hereby is fixed at the sum of Five Thousand Dollars, same to act as a supersedeas.

Adam C. Cliffe, District Judge.

---

[fol. 16] In United States District Court

Writ of Error—Filed July 25, 1925

United States of America, ss:

The President of the United States, to the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court before you, or some of you, between the United States of America, plaintiff, and Arthur C. Brown, defendant, a manifest error hath happened, to the great damage of the said Arthur C. Brown, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Seventh Circuit within thirty (30) days from the date hereof, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals for the Seventh Circuit may cause further to be done therein to

correct that error what of right, and according to the laws and customs should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States Supreme Court, this 25th day of July, in the year of our Lord one thousand nine hundred and twenty-five.

Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Allowed by: Adam C. Cliffe, District Judge.

[File endorsement omitted.]

---

[fol. 17] In United States District Court

[Title omitted]

Præcipe for Transcript of Record

To Charles M. Bates, Esq., Clerk of said court:

You will please prepare a true and correct transcript of the complete record in the above entitled cause to be filed with the clerk of the United States Circuit Court of Appeals for the Seventh Circuit, in obedience to the writ of error issued out of said district court on behalf of said Arthur C. Brown, to wit:

1. The presentment of the grand jury filed July 17, 1925;
2. The answer of said Arthur C. Brown thereto filed July 18, 1925;
3. The order of said district court of July 18, 1925, ordering said Arthur C. Brown to appear before the grand jury and there to produce documents in obedience to a subpœna;
4. The presentment of the grand jury filed July 18, 1925;
5. The order of the district court of July 18, 1925, adjudging said Arthur C. Brown to be in contempt and ordering him to be imprisoned for thirty days or until he complies with the requirements of said subpœna.
6. The assignment of errors filed by said Arthur C. Brown;

7. The petition for writ of error filed by said Arthur C. Brown;

8. The original writ of error with return thereof;

9. Order of July 25, 1925, allowing said writ of error;

10. Supersedeas bond filed by defendant July 25, 1925;

11. The original citation;

12. This præcipe;

13. Certificate of clerk authenticating transcript of record;

14. Certificate of clerk of transmission of record to the [fol. 18] United States Circuit Court of Appeals for the Seventh Circuit pursuant to the order allowing said writ of error.

Clerk's certificate to foregoing transcript omitted in printing.

---

[fol. 19] Citation, in usual form, showing service on Roger Shale, filed July 29, 1925, omitted in printing.

---

[fols. 20 & 21] Clerk's certificate to foregoing transcript omitted in printing.

---

Certificate to U. S. Supreme Court omitted in printing as it is printed under separate cover.

FILED
APR 6 1927
WM. R. STANSBURY
Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1926.

NO. [redacted] 33

ARTHUR C. BROWN

*vs.*

UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

## BRIEF AND ARGUMENT ON BEHALF OF ARTHUR C. BROWN.

WEYMOUTH KIRKLAND,
ROBERT N. GOLDING,
*Counsel for Arthur C. Brown.*

HAWKINS & LOOMIS CO., LAW PRINTERS, CHICAGO

# INDEX.


PAGE

ATEMENT OF THE CASE ..... 1

EF OF ARGUMENT.

I—QUESTION 1 ..... 4

The National Association of Furniture Manufacturers, being an unincorporated, voluntary organization and not a corporation, was unable, physically, to be served with the subpoena, to appear in answer thereto, or to produce documents as required thereby ..... 4

A. An unincorporated association, while not a technical partnership, possesses many of the characteristics of a partnership. A point of distinction is, that associations, as a general rule, are not organized for profit ..... 4

B. The outstanding difference between an unincorporated association and a corporation is that the former, like a partnership, is not a separate entity and possesses no individuality 5

1. It cannot, as such, own property ..... 5

2. It cannot, as such, enter into contracts ..... 6

3. It cannot, as such, sue in the name its members have assumed for business purposes ..... 6

4. Nor can it, in the absence of statute, generally be sued by such name ..... 6

C. The law has not been changed by the Hale and Coronado cases. This court has not endowed unincorporated associations with individuality ..... 7

1. The reasoning of the *Hale* case does not apply to this case ..... 7

2. The *Coronado* case is based upon the familiar theory of presence by representation 7

PAGE

PART II—QUESTION 2.

Corporate records may be reached by subpoena, whether the custodian thereof be another corporation, a partnership or an individual ..... 8

PART III—QUESTION 3.

Corporations and individuals may become members of unincorporated associations, in which case, the books and records belong to the individuals as well as to the corporations ..... 8

A subpoena would compel Brown to produce his own documents, for use against himself, in a criminal proceeding, in violation of his constitutional rights ..... 9

ARGUMENT ON BEHALF OF ARTHUR C. BROWN.

PART I—QUESTION 1 ..... 10

1. The National Association of Furniture Manufacturers, being an unincorporated, voluntary organization, and not a corporation, was unable, physically, to be served with the subpoena, to appear in answer thereto, or to produce documents as required thereby ..... 10

A. An unincorporated association, while not a technical partnership, possesses many of the characteristics of a partnership. A point of distinction is that associations, as a general rule, are not organized for profit ..... 10

B. The outstanding difference between an unincorporated association and a corporation is that the former, like a partnership, is not a separate entity and possesses no individuality ..... 12

1. An association, as such, cannot own property ..... 12

2. An association, as such, cannot enter into contracts ..... 15

3. An association, as such, cannot sue in the name its members have assumed for business purposes ..... 17

PAGE

4. An association, as such, cannot in the absence of statute, be sued by the name its members have, for convenience, assumed ..... 19

C. The law has not been changed by the Hale and Coronado cases. This court has not endowed unincorporated associations with individuality ..... 21

1. The reasoning of the *Hale* case does not apply to this case ..... 21

2. The *Coronado* case is based upon the familiar theory of presence by representation 22

ART II—QUESTION 2 ..... 27

ART III—QUESTION 3 ..... 28

ONCLUSION ..... 29

PPENDIX ..... 31

## TABLE OF CASES AND STATUTES.

ct of Sept. 7, 1916, ch. 451, § 1, 39 Stat. L. 728 ..... 24

ct of July 15, 1918, ch. 152, § 1, 40 Stat. L. 900 ..... 24

ct of July 2, 1890, ch. 647, § 8, 26 Stat. L. 210 ..... 24

*musement Syndicate Co.* v. *Martling*, 108 Kan. 798, 196 Pac. 1058 ..... 8, 28

*shley* v. *Dowling*, 203 Mass. 311, 89 N. E. 434 ..... 5, 14

*illman* v. *Fagin*, 200 U. S. 186 ..... 9, 29

*ptist Association* v. *Hart's Executors*, 4 Wheat. 1 ..... 5, 12

*rber* v. *Clendaniel*, 7 Boyce 11, 102 Atl. 84 ..... 5, 14

*atty* v. *Kurtz*, 2 Pet. 566 ..... 7, 26

*he* v. *Lloyds* (2 C. C. A.), 10 F. (2d) 731 ..... 7

*adford* v. *National Benefit Ass'n.*, 26 App. D. C. 268 ..... 5, 14

*own* v. *Protestant Episcopal Church*, 8 F. (2d) 149 ..... 7, 20

PAGE

*Browning* v. *Cover*, 108 Pa. St. 595 ..... 8, 28

*Butterfield* v. *Beardsley*, 28 Mich. 412 ..... 5, 14

*Campbell* v. *Floyd*, 153 Pa. St. 84, 25 Atl. 1033 ..... 4, 11

*Carter* v. *McClure*, 98 Tenn. 109, 38 S. W. 585 ..... 5, 14

*Claggett* v. *Kilbourne*, 66 U. S. 346 ..... 5, 14

*Commonwealth Bonding & Casualty Ins.* v. *Meeks* (Tex. Civ. App., March 8, 1916), 187 S. W. 681 6, 14

*Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295 ..... 22

*Cousin* v. *Taylor*, 115 Ore. 472, 239 Pac. 96 ..... 7, 20

14 a C. J. 293 ..... 8, 28

*Donovan* v. *Danielson*, 244 Mass. 432, 138 N. E. 811 ..... 6, 17

*Downing* v. *Marshall*, 23 N. Y. 366 ..... 5, 12

*E. I. Du Pont De Nemours Powder Co.* v. *Jones Bros.*, 200 Fed. 638 ..... 22

*Eliot* v. *Freeman*,, 220 U. S. 178, 186 ..... 24

*Fredendall* v. *Taylor*, 23 Wis. 538, 26 Wis. 286 ..... 6, 16

*Goesele* v. *Bimeler*, 14 How. 589 ..... 4, 11

*Grand International Brotherhood of L. E.* v. *Green*, 206 Ala. 196, 89 So. 435 ..... 6, 16

*Hale* v. *Henkel*, 201 U. S. 43 ..... 7, 21

*Hecht* v. *Malley*, 265 U. S. 144 ..... 24

Hedge & Horn's Appeal, 63 Pa. 273 ..... 5, 14

*Heiligenstein* v. *Schlotterbeck*, 300 Ill. 206, 133 N. E. 188 ..... 6, 13

*Heinze* v. *Industrial Com.*, 288 Ill. 342 ..... 5, 14

*Hoadley* v. *County Commissioners*, 105 Mass. 519 ..... 5, 14

*Houghton* v. *Grimes* (Vt., Nov. 4, 1926), 135 Atl. 15 ..... 4, 11

*Houston* v. *Dexter & Carpenter*, 300 Fed. 354 ..... 8, 28

*In re* Peck, 206 N. Y. 55, 99 N. E. 258 ..... 5, 14

*In re* Waters of Willow Creek (Ore., May 26, 1925), 236 Pac. 487 ..... 6, 20

*Internal Revenue Agent* v. *Sullivan*, 287 Fed. 138 ..... 9, 29

*Iron Molders' Union* v. *Allis Chalmers Co.* (7 C. C. A.), 166 Fed. 45 ..... 7, 26

*Karges Furniture Co.* v. *Amalgamated W. L. U. No. 131*, 165 Ind. 421, 75 N. E. 877 ..... 6, 7, 19, 21

*Korstad* v. *Williams*, 80 Wash. 452, 141 Pac. 881 ..... 4, 11

PAGE

*Lawler* v. *Murphy*, 58 Conn. 294, 20 Atl. 457 ..... 6, 17

*Lewis* v. *Tilton*, 64 Ia. 220, 19 N. W. 911 ..... 6, 15

*Liquid Carbonic Co.* v. *Sullivan*, 103 Okl. 78, 229 Pac. 561 ..... 5, 14

*McFadden* v. *Lecka*, 48 Ohio St. 513, 28 N. E. 874 ..... 5, 14

*Marshalltown Mut. Plate Glass Ins. Ass'n.* v. *Bendlage*, 195 Ia. 1200, 191 N. W. 97 ..... 6, 19

*Martin* v. *Hemphill* (Com. of App., Tex., Sec. B, February 15, 1922), 237 S. W. 550 ..... 4, 11

*Martin* v. *D. B. Martin Co.*, 10 Del. Ch. 211, 88 Atl. 612 ..... 8, 27

*Moore* v. *Hillsdale County Tel. Co.*, 171 Mich. 388, 137 N. W. 241 ..... 8, 28

*Moskal* v. *New Era Commercial Ass'n.*, 228 Ill. App. 278 ..... 6, 11, 20

*National Harness Mfgs. Ass'n.* v. *Federal Trade Com.* (6 C. C. A.), 268 Fed. 705 ..... 7, 26

*New England States Sangerbund* v. *Fidelia Society*, 218 Mass. 174, 105 N. E. 629 ..... 6, 19

*Nightingale* v. *Barney*, 4 Greene (Ia.) 106 ..... 6, 18

*Normandy Consol. School Dist.* v. *Harral* (Mo., Div. 1, July 30, 1926), 286 S. W. 86 ..... 5, 12

*Norwood* v. *Francis*, 25 App. D. C. 463 ..... 5, 14

*O'Neil* v. *Co-Operative League of America*, 278 Fed. 737 ..... 4, 11

*Ostrom* v. *Greene*, 161 N. Y. 353, 55 N. E. 919 ..... 5, 15

*Owens* v. *The Missionary Society*, 14 N. Y. 380 ..... 5, 12

*Peck, In re*, 206 N. Y. 55, 99 N. E. 258 ..... 5, 14

*People* v. *Rose*, 219 Ill. 46 ..... 5, 14

*People* v. *Maljan*, 34 Cal. App. 384, 167 Pac. 547 ..... 5, 14

*Pickett* v. *Walsh*, 192 Mass. 572, 78 N. E. 753 ..... 6, 20

*Quitman Oil Co.* v. *McRee*, 18 Ga. App. 128, 88 S. E. 921 ..... 8, 28

*Robbins Co.* v. *Cook*, 42 S. D. 136, 173 N. W. 445 ..... 4, 11

*Roberts* v. *Kennedy*, 13 Del. Ch. 133, 116 Atl. 253 ..... 6, 18

*Salem-Fairfield Tel. Ass'n.* v. *McMahan*, 78 Ore. 477, 153 Pac. 788 ..... 8, 28

*Schein* v. *Erasmus Realty Co. Inc.*, 194 App. Div. 38, 184 N. Y. S. 840 ..... 5, 12

PAGE

*Simson* v. *Klipstein*, 262 Fed. 823 ..... 5, 14

*Society of Shakers* v. *Watson* (6 C. C. A.), 68 Fed. 730 ..... 6, 19

*Spaulding* v. *Evenson*, 149 Fed. 913, affirmed (9 C. C. A.), 150 Fed. 547 ..... 7, 26

*Spotswood* v. *Morris*, 12 Idaho 360, 85 Pac. 1094 ..... 5, 14

*St. Paul Typothetae* v. *St. Paul Bookbinders' Union, No. 37*, 94 Minn. 351, 102 N. W. 725 ..... 6, 19

*State* v. *Kansas City Live Stock Exchange*, 211 Mo. 181, 109 S. W. 675 ..... 7, 20

*Thomas* v. *Ohio State University Trustees*, 195 U. S. 207 ..... 4, 11

*Thurmond* v. *Cedar Spring Baptist Church*, 110 Ga. 816, 36 S. E. 221 ..... 7, 20

*Tucker* v. *Eatough*, 186 N. C. 504, 120 S. E. 57 ..... 7, 20

*Union Wine Co.* v. *Green*, 115 N. Y. S 921 ..... 5, 14

*United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344 ..... 7, 22

*U. S.* v. *Brasley*, 268 Fed. 59 ..... 7, 9, 22, 29

*U. S.* v. *Invader Oil Corp.*, 5 F. (2d) 715 ..... 8, 27

*United States and Cuba A. W. E. Corp.* v. *Lloyds*, 291 Fed. 889 ..... 7, 23

*Waters of Willow Creek, In re*, (Ore., May 26, 1925), 236 Pac. 487 ..... 6, 20

*Wilson* v. *Carter Oil Co.*, 46 W. Va. 469, 33 S. E. 249 ..... 8, 28

*Wilson* v. *U. S.*, 221 U. S. 361 ..... 7, 21

*Woodworth* v. *Old Second Nat. Bank*, 154 Mich. 459, 117 N. W. 893 ..... 8, 27

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1926.

---

ARTHUR C. BROWN

*vs.*

UNITED STATES OF AMERICA

---

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

---

## STATEMENT OF THE CASE.

This case is here on certificate from the circuit court of appeals for the seventh circuit, which certified the following questions (rec. 3):

Question 1. Can the court compel through a subpoena duces tecum the production of the books and papers of a voluntary unincorporated association, over its protest?

Question 2. Would the answer to question no. 1 be affected if it appear that the members of such voluntary unincorporated association were all corporations?

Question 3. Would the fact that the secretary of such voluntary unincorporated association is also a member of such association, entitle him to claim the protection of the fourth or fifth amendment to the constitution, notwithstanding the subpoena called for the papers that belonged to and were in the possession of the said voluntary unincorporated association?

The facts are as follows:—

On July 13, 1925, the district court issued a subpoena duces tecum, directed, not to Arthur C. Brown, but to "National Alliance of Furniture Manufacturers," commanding the association to appear before the grand jury, at Chicago, on July 17, 1925, there to produce certain papers described in said subpoena. (Rec. 1, 2.)

The marshal served this subpoena on Brown, who was the secretary of the association. (Rec. 2.)

Brown thereupon, at the time stated, appeared before the grand jury at Chicago and made the following statement:

> "Gentlemen of the Grand Jury:
>
> There has been served upon me a subpoena dated July 13, 1925, ordering National Alliance of Furniture Manufacturers to appear on July 17, 1925, before your honorable body in Chicago.
>
> There is no such person or entity as National Alliance of Furniture Manufacturers which is capable of being served with a subpoena or of appearing here in answer to one. I have appeared here today, in deference to your official position, to inform you of that fact." (Rec. 2)

This association was a typical trade association, being a purely voluntary organization, and was not a corporation, either *de jure* or *de facto*. (Rec. 2.)

After making the above statement to the grand jury, Brown was asked questions by government counsel, then present, and was informed by them that

> "the requirements of the subpoena were not with reference to the private or personal affairs of him the said Arthur C. Brown, and that said requirements concerned him the said Arthur C. Brown only as he was connected with the affairs of said National Alliance of Furniture Manufacturers." (Rec. 2.)

Inasmuch, however, as Brown had already been indicted
a previous grand jury because of his connection with said
sociation, he stood upon his constitutional rights and de-
ned to answer any questions until and unless he personally
ould be subpoenaed and sworn as a witness. (Rec. 2.)

The grand jury thereupon, on July 17, 1925, presented
own to the court as "a contumacious witness." (Rec. 3.)

Finally, the court, upon a second presentment by the grand
y, adjudged Brown guilty of criminal contempt. (Rec. 3.)

# BRIEF OF ARGUMENT.

## PART I.

### QUESTION 1.

**I. The National Association of Furniture Manufacturers, being an unincorporated, voluntary organization, and not a corporation, was unable, physically, to be served with the subpoena, to appear in answer thereto, or to produce documents as required thereby.**

**A. An unincorporated association, while not a technical partnership, possesses many of the characteristics of a partnership. A point of distinction is, that associations, as a general rule, are not organized for profit.**

*Goesele* v. *Bimeler*, 14 How. 589;

*Thomas* v. *Ohio State University Trustees*, 195 U. S. 207;

*Houghton* v. *Grimes* (Vt., Nov. 4, 1926), 135 Atl. 15;

*Martin* v. *Hemphill* (Com. of App., Tex., Sec. B, Feb. 15, 1922), 237 S. W. 550, 553;

*O'Neil* v. *Co-Operative League of America*, 278 Fed. 737;

*Robbins Co.* v. *Cook*, 42 S. D. 136, 173 N. W. 445;

*Korstad* v. *Williams*, 80 Wash. 452, 141 Pac. 881;

*Campbell* v. *Floyd*, 153 Pa. St. 84, 25 Atl. 1033.

**B. The outstanding difference between an unincorporated association and a corporation is that the former, like a partnership, is not a separate entity and possesses no individuality.**

1. It cannot, as such, own property.

*Baptist Association* v. *Hart's Executors*, 4 Wheat. 1;
*Owens* v. *The Missionary Society*, 14 N. Y. 380;
*Downing* v. *Marshall*, 23 N. Y. 366;
*Ostrom* v. *Greene*, 161 N. Y. 353, 55 N. E. 919;
*Schein* v. *Erasmus Realty Co. Inc.*, 194 App. Div. 38, 184 N. Y. S. 840;
*Normandy Consol. School Dist.* v. *Harral* (Mo., Div. 1, July 30, 1926), 286 S. W. 86;
*Claggett* v. *Kilbourne*, 66 U. S. 346, 348;
*Simson* v. *Klipstein*, 262 Fed. 823;
*Spotswood* v. *Morris*, 12 Idaho, 360, 85 Pac. 1094;
*Liquid Carbonic Co.* v. *Sullivan*, 103 Okl. 78, 229 Pac. 561;
*People* v. *Rose*, 219 Ill. 46, 60;
*McFadden* v. *Leeka*, 48 Ohio St. 513, 28 N. E. 874, 878;
*Ashley* v. *Dowling*, 203 Mass. 311, 89 N. E. 434;
*Carter* v. *McClure*, 98 Tenn. 109, 38 S. W. 585;
*Hodge and Horn's Appeal*, 63 Pa. 273;
*Hoadley* v. *County Commissioners*, 105 Mass. 519;
*Butterfield* v. *Beardsley*, 28 Mich. 412;
*Norwood* v. *Francis*, 25 App. D. C. 463, 474;
*Bradford* v. *National Benefit Ass'n.*, 26 App. D. C. 268, 273;
*Heinze* v. *Industrial Com.*, 288 Ill. 342, 346;
*In re* Peck, 206 N. Y. 55, 99 N. E. 258, 259;
*Union Wine Co.* v. *Green*, 115 N. Y. S. 921;
*Barber* v. *Clendaniel*, 7 Boyce 11, 102 Atl. 84, 86;
*People* v. *Maljan*, 34 Cal. App. 384, 167 Pac. 547, 549;

*Commonwealth Bonding & Casualty Ins. Co.* v. *Meeks* (Tex. Civ. App., Mar. 8, 1916), 187 S. W. 681, 685;

*Heiligenstein* v. *Schlotterbeck*, 300 Ill. 206, 133 N. E. 188.

2. It cannot, as such, enter into contracts.

*Lewis* v. *Tilton*, 64 Ia. 220, 19 N. W. 911;

*Fredendall* v. *Taylor*, 23 Wis. 538, 26 Wis. 286;

*Lawler* v. *Murphy*, 58 Conn. 294, 20 Atl. 457;

*Grand International Brotherhood of L. E.* v. *Green*, 206 Ala. 196, 89 So. 435.

3. It cannot, as such, sue in the name its members have assumed for business purposes.

*New England States Sangerbund* v. *Fidelia Society*, 218 Mass. 174, 105 N. E. 629;

*Donovan* v. *Danielson*, 244 Mass. 432, 138 N. E. 811;

*Karges Furniture Co.* v. *Amalgamated W. L. U. No. 131*, 165 Ind. 421, 75 N. E. 877;

*Nightingale* v. *Barney*, 4 Greene (Ia.), 106;

*Marshalltown Mut. Plate Glass Ins. Ass'n.* v. *Bendlage*, 195 Ia. 1200, 191 N. W. 97;

*St. Paul Typothetae* v. *St. Paul Bookbinders' Union No. 37*, 94 Minn. 351, 102 N. W. 725;

*Roberts* v. *Kennedy*, 13 Del. Ch. 133, 116 Atl. 253.

4. Nor can it, in the absence of statute, generally be sued by such name.

*Society of Shakers* v. *Watson* (6 C. C. A.), 68 Fed. 730;

*Moskal* v. *New Era Commercial Ass'n.*, 228 Ill. App. 278;

*Pickett* v. *Walsh*, 192 Mass. 572, 78 N. E. 753;

*In re* Waters of Willow Creek (Ore., May 26, 1925), 236 Pac. 487;

*Brown* v. *Protestant Episcopal Church*, 8 F. (2d) 149;

*Cousin* v. *Taylor*, 115 Ore. 472, 239 Pac. 96;

*Thurmond* v. *Cedar Spring Baptist Church*, 110 Ga. 816, 36 S. E. 221;

*Tucker* v. *Eatough*, 186 N. C. 504, 120 S. E. 57;

*State* v. *Kansas City Live Stock Exchange*, 211 Mo. 181, 109 S. W. 675.

**C. The law has not been changed by the Hale and Coronado cases. This court has not endowed unincorporated associations with individuality.**

1. The reasoning of the *Hale* case does not apply to this case.

*Hale* v. *Henkel*, 201 U. S. 43;

*Wilson* v. *U. S.*, 221 U. S. 361;

*U. S.* v. *Brasley*, 268 Fed. 59;

*Karges Furniture Co.* v. *Amalgamated W. L. U. No. 131*, 165 Ind. 421, 75 N. E. 877.

2. The *Coronado* case is based upon the familiar theory of presence by representation.

*United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344;

*Beatty* v. *Kurtz*, 2 Pet. 566;

*Spaulding* v. *Evenson*, 149 Fed. 913, affirmed (9 C. C. A.), 150 Fed. 517;

*National Harness Mfgs. Ass'n.* v. *Federal Trade Com.* (6 C. C. A.), 268 Fed. 705;

*Iron Molders' Union* v. *Allis Chalmers Co.* (7 C. C. A.), 166 Fed. 45, 48;

*United States and Cuba A. W. E. Corp.* v. *Lloyds*, 291 Fed. 889;

*Robe* v. *Lloyds* (2 C. C. A.), 10 F. (2d) 731.

## Part II.

### Question 2.

**Corporate records may be reached by subpoena, whether the custodian thereof be another corporation, a partnership or an individual.**

*U. S.* v. *Invader Oil Corp.*, 5 F. (2d) 715;

*Woodworth* v. *Old Second Nat. Bank*, 154 Mich. 459, 117 N. W. 893;

*Martin* v. *D. B. Martin Co.*, 10 Del. Ch. 211, 88 Atl. 612.

## Part III.

### Question 3.

**Corporations and individuals may become members of unincorporated associations, in which case, the books and records belong to the individuals as well as to the corporations.**

*Houston* v. *Dexter & Carpenter*, 300 Fed. 354;

*Quitman Oil Co.* v. *McRee*, 18 Ga. App. 128, 88 S. E. 921;

*Salem-Fairfield Tel. Ass'n.* v. *McMahan*, 78 Ore. 477, 153 Pac. 788;

*Wilson* v. *Carter Oil Co.*, 46 W. Va. 469, 33 S. E. 249;

14 a C. J. 293;

*Amusement Syndicate Co.* v. *Martling*, 108 Kan. 798, 196 Pac. 1058;

*Moore* v. *Hillsdale County Tel. Co.*, 171 Mich. 388, 137 N. W. 241;

*Browning* v. *Cover*, 108 Pa. St. 595.

**A subpoena would compel Brown to produce his own documents, for use against himself in a criminal proceeding, in violation of his constitutional rights.**

*Ballman* v. *Fagin*, 200 U. S. 186;
*U. S.* v. *Brasley*, 268 Fed. 59;
*Internal Revenue Agent* v. *Sullivan*, 287 Fed. 138.

# ARGUMENT ON BEHALF OF ARTHUR C. BROWN.

## PART I.

### QUESTION 1.

**Can the court compel through a subpoena duces tecum the production of the books and papers of a voluntary unincorporated association, over its protest?**

We submit that the answer to the above question, which we suggest is in the negative, is to be found in the determination of the question of whether a trade association is to be governed, with respect to the production of documents, by the rules relative to partnerships, or those relative to corporations.

**I. The National Association of Furniture Manufacturers, being an unincorporated, voluntary organization, and not a corporation, was unable, physically, to be served with the subpoena, to appear in answer thereto, or to produce documents as required thereby.**

**A. An unincorporated association, while not a technical partnership, possesses many of the characteristics of a partnership. A point of distinction is, that associations, as a general rule, are not organized for profit.**

Cases involving associations, of one sort or another, have brought to the courts for decision many questions, but the first question raised in this case seems never to have been decided in terms, although the authorities permit but one answer thereto, to-wit, that an association, not being an arti-

ficial person or entity, cannot do or be required to do those things which can only be done by a person, natural or artificial, possessing individuality or personality.

The problem is really one of physics, not of law.

In speaking of associations, courts never refer to them as corporate bodies, but invariably refer to them as partnerships.

Thus, in *Goesele* v. *Bimeler*, 14 How. 589, 607, this court speaks of a religious society, formed under articles of association, but not incorporated, as a "partnership."[1]

An association, being in the nature of a partnership, cannot have, as such, citizenship for jurisdictional purposes.[2]

The association, it is true, has a name, just as many partnerships formed for the practice of law have names, but

> "The name which it adopts merely stands for the names of its members, as a matter of convenience."[3]

It is, in fact, a mere "trade name,"[4] descriptive of a "contractual status."[5]

A great majority of partnerships are formed for profit, just as corporations are, but some partnerships and corpora-

---

[1] For representative cases describing or treating associations or unincorporated bodies as partnerships, see:

*Thomas* v. *Ohio State University Trustees*, 195 U. S. 207, 213;

*Robbins Co.* v. *Cook*, 42 S. D. 136, 173 N. W. 445, 446;

*Korstad* v. *Williams*, 80 Wash. 452, 141 Pac. 881;

*Houghton* v. *Grimes* (Vt., Nov. 4, 1926), 135 Atl. 15.

[2] *O'Neil* v. *Co-operative League*, 278 Fed. 737.

[3] *Campbell* v. *Floyd*, 153 Pa. St. 84, 25 Atl. 1033, 1036.

[4] *Moskal* v. *New Era Commercial Ass'n.*, 228 Ill. App. 278, 280.

[5] *Martin* v. *Hemphill* (Com. of App., Tex., Sec. B, Feb. 15, 1922), 237 S. W. 550, 553.

tions do not have the making of profits as the object of their existence.

A knowledge of what might be called business nomenclature leads to the conclusion that those organizations which are not created for profit have adopted the name "association," which differentiates them from ordinary business enterprises, just as "corporation sole" distinguishes that particular kind of corporate entity from all others.

The *genus* is not changed, however, by the descriptive name given to the *specie*.

**B. The outstanding difference between an unincorporated association and a corporation is that the former, like a partnership, is not a separate entity and possesses no individuality.**

1. An association, as such, cannot own property.

In *Baptist Association* v. *Hart's Executors*, 4 Wheat. 1, this court had before it the question of whether or not an unincorporated association could take under a will. Speaking for the court, which decided the question in the negative, Mr. Chief Justice Marshall said (p. 27):

> "It was obviously the intention of the testator that the association should take in its character as an association; and should in that character perform the trust created by the will. * * * This association is described with sufficient accuracy to be clearly understood; but not being incorporated, is incapable of taking this trust as a society."

---

"To the same effect, see:

*Owens* v. *The Missionary Society*, 14 N. Y. 380;

*Downing* v. *Marshall*, 23 N. Y. 366;

*Schein* v. *Erasmus Realty Co., Inc.*, 194 App. Div. 38, 184 N. Y. S. 840;

*Normandy Consol. School Dist.* v. *Harral* (Mo., Div. 1, July 30, 1926), 286 S. W. 86.

This case is made stronger by the fact that the attorney general, presenting the case for the association, argued (p. 15) that the incorporation of the association, soon after the death of the testator, presented an entity capable of taking.

Counsel's argument was answered by the court as follows (p. 28):

> "At the death of the testator, then, there were no persons in existence who were capable of taking this bequest. Does the subsequent incorporation of the association give it this capacity?
>
> The rules of law compel the court to answer this question in the negative. The bequest was intended for a society which was not at the time, and might never be, capable of taking it. According to law, it is gone forever. The legacy is void; and the property vests, if not otherwise disposed of by the will, in the next of kin. A body corporate afterwards created, had it even fitted the description of the will, cannot devest this interest, and claim it for their corporation."

In *Heiligenstein* v. *Schlotterbeck*, 300 Ill. 206, the supreme court of Illinois had before it the question of the validity of a deed of 60 acres to a church, there being some question in the case of whether or not the church was a corporation. In holding that the deed was void, the court said (p. 212):

> "We do not find it necessary to determine whether St. Claire's Roman Catholic Church of Altamont is a corporation, because this deed is void regardless of our conclusion on that point. If the church is a corporation the deed is void because the conveyance is in violation of the statute.[1] • • • If the church is a mere voluntary

---

[1] Limiting religious corporations to the ownership of not more than 20 acres.

association of individuals for religious purposes it is not a person, natural or artificial, nor is it any other entity that may be the owner of property."

The cases do not support the theory which the government must advance, to wit, that an unincorporated trade association is a person or entity, natural or artificial.

Even in the case of unincorporated joint-stock companies, which more closely resemble a corporation than does an informal trade association, courts hold that no separate entity exists and that the unincorporated company is in reality nothing more than a partnership.[8]

Courts are unanimous in holding that there is no such thing as an association, as distinguished from its members, any more than there is such a thing as a partnership distinguishable from the partners.[9]

---

[8] *Claggett* v. *Kilbourne*, 66 U. S. 346, 348;
*Simson* v. *Klipstein*, 262 Fed. 823;
*Spotswood* v. *Morris*, 12 Idaho, 360, 85 Pac. 1094;
*Liquid Carbonic Co.* v. *Sullivan*, 103 Okl. 78, 229 Pac. 561;
*People* v. *Rose*, 219 Ill. 46, 60;
*McFadden* v. *Leeka*, 48 Ohio St. 513, 28 N. E. 874, 878;
*Ashley* v. *Douling*, 203 Mass. 311, 89 N. E. 434;
*Carter* v. *McClure*, 98 Tenn. 109, 38 S. W. 585;
*Hedge and Horn's Appeal*, 63 Pa. 273;
*Hoadley* v. *County Commissioners*, 105 Mass. 519;
*Butterfield* v. *Beardsley*, 28 Mich. 412;
*Norwood* v. *Francis*, 25 App. D. C. 463, 474;
*Bradford* v. *National Benefit Ass'n.*, 26 App. D. C. 268, 273.

[9] *Heisse* v. *Industrial Com.*, 288 Ill. 342, 346;
*In re* Peck, 206 N. Y. 55, 99 N. E. 258, 259;
*Union Wine Co.* v. *Green*, 115 N. Y. S. 921;
*Barber* v. *Clendaniel*, 7 Boyce 11, 102 Atl. 84, 86;
*People* v. *Maljan*, 34 Cal. App. 384, 167 Pac. 547, 549;
*Commonwealth Bonding & Casualty Ins. Co.* v. *Meeks*, (Tex. Civ. App., Mar. 8, 1916), 187 S. W. 681, 685.

It will serve no useful purpose to analyze the authorities in detail, and we will content ourselves with a quotation from *Ostrom* v. *Greene*, 161 N. Y. 353, 55 N. E. 919, a leading case, wherein the court, in discussing a typical association, said:

> "Corporations, co-partnerships, joint-stock associations, and voluntary associations are organizations of human beings for convenience in transacting business, whether the object be to make money or to do charitable or philanthropic work. They all have some points in common, but in some respects each differs from all the others. The points of resemblance sometimes lead to confusion in determining the rights, powers, and liabilities of the organization under consideration at the time the question arises. The plaintiff's association was neither a corporation nor a co-partnership, and, while it resembled both in some respects, it differed materially from either. It had none of the statutory rights of a corporation, unless the right to sue and be sued in the name of its president may be of a corporate nature. Code Civ. Proc. § 1919. It had no charter from the state giving it certain powers, and subjecting it to certain limitations and liabilities. It had no right to use a common seal; no power of perpetual succession, or of contracting under a corporate name. It was not an artificial person, and had no distinct existence independent of its members. It was not a collective whole, which as such could hold property or dispose of it."

2. An association, as such, cannot enter into contracts.

In *Lewis* v. *Tilton*, 64 Ia. 220, 19 N. W. 911, an action was brought on a lease which had been signed by the four defendants as the "Executive Committee of the 'Ottumwa Temperance Reform Club.'"

In reversing a judgment which, by sustaining a demurrer to the petition, held that the defendants were not personally liable on the lease, the supreme court of Iowa said:

> "It is insisted that the lease shows that credit was extended to the club, and that the contract was made with it; that the principal was named, and therefore the defendants cannot be made individually liable. This line of argument, possibly, would be conclusive if there is a principal. But there is none. The club is a myth. It has no legal existence and never had. It cannot sue or be sued. The defendants contracted in the name of the supposed principal; that is, they claimed there was a principal for whom they were acting, but it now appears there is no principal known to the law. But under the allegations of the amended petition it should be assumed, we think, there was, as a matter of fact, a body of men associated together for a benevolent purpose, who had assumed the name above stated for the avowed purpose, by their united efforts, of suppressing intemperance. There is, however, some doubt in our minds whether it can be said that the plaintiff extended credit to an organization that had no legal existence. As the law does not recognize such an organization, we are at a loss to know how or why it can be said, as a matter of law, the plaintiff contracted with and extended credit to a mere myth. In legal parlance the organization cannot be named. It has no habitation or place of abode."[10]

---

[10] To the same effect, see:

*Fredendall* v. *Taylor*, 23 Wis. 538, 26 Wis. 286;
*Grand International Brotherhood of L. E.* v. *Green*, 206 Ala. 196, 89 So. 435.

In *Lawler* v. *Murphy*, 58 Conn. 294, 20 Atl. 457, the case as even stronger, for there the contract was signed as follows:

"In witness whereof the said A. O. H. State Insurance Fund hath, by its president and secretary, signed and delivered this certificate at its office, this 12th day of July, 1886.

John D. Cunningham,
Secretary Ins. Fund.
P. J. O'Connor,
Treasurer Ins. Fund.
John P. Murphy,
President Ins. Fund."

Thus, the association, *as such*, purported to contract in the manner usually adopted by corporate entities.

The supreme court of Connecticut, however, reached the ne conclusion that was reached in the *Lewis* case, *supra*, d that the individual signers were personally responsible, l said:

"If, as the statute permits, the organization consisted simply of individuals united under a distinguishing associate name for business purposes, they did not thereby acquire either corporate power or immunity from individual liability."

An association, as such, cannot sue in the name its members have assumed for business purposes.

n *Donovan* v. *Danielson*, 244 Mass. 432, 138 N. E. 811, the l court had given judgment in favor of the plaintiffs, who l brought the suit as the Grand Executive Council and the and Court of Massachusetts, Foresters of America. The ociation had specifically provided, in its constitution, that

"All suits at law, as complainant or defendant, or for the recovery of property or money, shall be conducted by the Executive Council in the name of the Grand Court • • •."

The supreme court of Massachusetts, however, reversed the decree and ordered a dismissal of the bill, stating its reasons as follows:

> "The Grand Court is an unincorporated association; being such, the Grand Court cannot sue or be sued in the character of a corporate body, 'for it is the exclusive prerogative of the government to create corporations, and invest them with the power of suing, as such, by their corporate name.' Story, Equity Practice (10th Ed.) § 497, note. Such an organization is a partnership, and in law must sue and be sued in the names of all the members of the partnership, in the absence of legislative authority. * * * It is plain the association was without power to authorize the Grand Executive Council to sue in its name or as the Grand Court of Massachusetts."

In *Nightingale* v. *Barney*, 4 Greene (Ia.) 106, it was said that

> "None but a natural or artificial person can become a party to a suit. An unincorporated association, such as a masonic lodge, cannot be recognized as a person or party at law, and hence cannot sue or be sued."

In *Roberts* v. *Kennedy*, 13 Del. Ch. 133, 116 Atl. 253, the chancellor, in discussing "the fundamental difference existing between a corporation on the one hand and an unincorporated association of individuals on the other," said:

> "The corporation, being an artificial person, has a distinct entity of its own, can hold and possess property, own choses in action, and sue and be sued in its own name. Therefore, when its stockholders undertake to sue in its behalf, they assert rights that are the corporation's and which the corporation is capable of litigating in its own name. Hence, while the stockholders have an interest in the corporation's property, an interest which a court of equity will in proper cases pro-

tect, they cannot, in the absence of exceptional circumstances, litigate such interest unless the corporation, through its proper officers, first refuses to do so. The primary right is in the corporation. • • •

But an unincorporated association of individuals such as is the Brotherhood in this case, has no identity of its own and cannot sue. The property and rights which are said to belong to it, belong in fact to its members." "

we will hereafter demonstrate, when Brown claimed stitutional right to be exempt from producing evidence st himself and to be free from unlawful searches and res, he was claiming *his* right, not the right of some person or entity.

An association, as such, cannot in the absence of statute, e sued by the name its members have, for convenience, ssumed.

those cases wherein the plaintiff attempted to sue an ation *as such*, courts have uniformly held that, in the ce of statute, this could not be done, because an asso-n

has no legal existence as an aggregation." "

the same effect, see:

*Karges Furniture Co.* v. *Amalgamated W. L. U. No. 131*, 165 Ind. 421, 75 N. E. 877;
*New England States Sangerbund* v. *Fidelia Society*, 218 Mass. 174, 105 N. E. 629;
*Marshalltown Mut. Plate Glass Ins. Ass'n* v. *Bendlage*, 195 Ia. 1200, 191 N. W. 97;
*St. Paul Typothetae* v. *St. Paul Bookbinders' Union No. 37*, 94 Minn. 351, 102 N. W. 725.

*ciety of Shakers* v. *Watson* (6 C. C. A.), 68 Fed. 730, 737.

In the leading case of *Pickett* v. *Walsh*, 192 Mass. 572, 78 N. E. 753, the supreme court of that state said:

> "There is no such entity known to the law as an unincorporated association, and consequently it cannot be made a party defendant."[10]

Thus, an association is a kind of partnership, operated under a trade name, having no entity or existence apart from that of its members, unable to have, do or possess anything except as its members have, do or possess the thing in question. It cannot be "found" by the marshal, it cannot accept service of process, it cannot travel in response thereto,—"it" isn't!

The subpoena in this case, then, was directed to a partnership, trade name, or contractual status.

In view of the law as we have demonstrated it to be, we respectfully submit that this court must answer in the negative the first question certified (rec. 3), unless the court find that the *Hale* or *Coronado* cases are applicable here.

---

[10] To the same effect, see:

*Brown* v. *Protestant Episcopal Church*, 8 F. (2d) 149;

*In re* Waters of Willow Creek (Ore., May 26, 1925), 236 Pac. 487;

*Cousin* v. *Taylor*, 115 Ore. 472, 239 Pac. 96;

*Moskal* v. *New Era Commercial Ass'n.*, 228 Ill. App. 278;

*Thurmond* v. *Cedar Spring Baptist Church*, 110 Ga. 816, 36 S. E. 221;

*Tucker* v. *Eatough*, 186 N. C. 504, 102 S. E. 57;

*State* v. *Kansas City Live Stock Exchange*, 211 Mo. 181, 109 S. W. 675.

**The law has not been changed by the Hale and Coronado cases. This court has not endowed unincorporated associations with individuality.**

The reasoning of the *Hale* case does not apply to this case.

In *Hale* v. *Henkel*, 201 U. S. 43, this court held that a poration could not claim a constitutional right to decline produce evidence against itself, and that an officer could claim a like right in refusing to produce documents beging to the corporation, which would incriminate him sonally. The right of an individual "to carry on his vate business, in his own way" and to refuse "to divulge business, or to open his doors to an investigation, so as it may tend to criminate him" was expressly recized.

he reasoning upon which the decision was based was ated in *Wilson* v. *U. S.*, 221 U. S. 361, wherein this t made plain the fact that the documents, being the prop- of the corporation, a separate entity, and not the prop- of the custodian, were subject to examination by virtue he visitatorial powers of the sovereign.

t the United States possesses no such visitatorial powers individuals, whether they be operating as such or as rtnership, which is created and exists by virtue of pri- contract, not statutory authority.

*Karges Furniture Co.* v. *Amalgamated W. L. U. No.* 165 Ind. 421, 75 N. E. 877, the court said:

"On the other hand, in the absence of an enabling statute defining the rights and liabilities of the members, societies, associations, partnerships, and other bodies, combined under their own rule, for their own private benefit, and without any express sanction of law, are not, in the collective capacity and name, recognized at common law as having any legal existence distinct from their members."

Partnerships, like individuals, owe no duty to the United States except such as is owed by all citizens generally,—to be law-abiding, etc.

The members of partnerships, being individuals, are protected by the constitution from being required to give evidence against themselves.

This very point arose in *U. S.* v. *Brasley*, 268 Fed. 59, wherein a motion was made for the return of certain documents which had been seized under a subpoena duces tecum directed to "Brasley-Krieger Shoe Company, Simon Brasley, Leon Krieger and Bessie B. Cohen."

The company was, in fact, a partnership.

The district court held that the documents were the property of the individuals and they were ordered returned.

2. The *Coronado case* is based upon the familiar theory of presence by representation.

In *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344, this court held that the members of a labor union could be sued by their partnership or trade name.

Notwithstanding the fact that the court said, in *Coronado Coal Co. v. United Mine Workers of America*, 268 U. S. 295, 58/297, that in the first *Coronado* case it had been held that the unions "were, though unincorporated associations, subject to suit under the Anti-trust Act," we submit that the decision of the court was not rested upon the theory that the labor union existed as an entity, separate and apart from its members. The question then before the court was (p. 390) "merely a procedural matter," and the decision, like statutes which permit a similar result,* made no change in the essential nature of associations.

---

* *E. I. Du Pont De Nemours Powder Co.* v. *Jones Bros.*, 200 Fed. 638, 641 2.

It is submitted that the protection afforded the individual by the constitution and its amendments is matter of substance, not merely of procedure.

The limitations inherent in the *Coronado* case have been succintly stated by Circuit (then District) Judge Learned Hand as follows:[11]

> "In that case the court affirmed the jurisdiction of the District Court over a trade union of some 450,000 members, in the United States and Canada. Over some of the members, the officers of a number of the locals, and the officers of the Union, jurisdiction had been got in usual form, and it was held that this brought in the association as a whole. The decision did not effect a general change in the status of such associations; rather, it turned upon the character of a trade union as such, especially because of its repeated recognition in statutes of the United States as an entity. It is to be read as applicable only to such cases.
>
> Moreover, in that case some of the members had been served, and personal judgment could have been got against them in any event. The action sounding in tort, it was not necessary to join all the joint tortfeasors. It nowhere appears that the Supreme Court supposed that judgment could have been entered against those members who were outside of the jurisdiction, and I venture to believe that it could not. The court was interested in whether the union funds could be reached on execution, and that was all."

Lest it be hereafter contended too seriously by counsel the United States that the mere recognition, in a statute, the association as a body which may be proceeded against some purposes results in the association's acquiring an

---

[11] *United States & Cuba A. W. E. Corp.* v. *Lloyds*, 291 Fed. 889, 891-2.

entity, and in the individual members thereof losing their constitutional privileges, we may ask, *in limine*, what is to be done about "partnerships," "societies," "trusts," "estates," "firms," "committees," "companies," "two or more persons having a joint or common interest," "a body incorporate" and any "other unincorporated body of individuals?" All of these groups have been recognized by statutes, which have been gathered together in the appendix hereto.

One statute, in particular, recognizes a partnership[16] in exactly the same words as the Sherman Act recognizes an association.[17] How distinguish between the two?

If the words "existing under or authorized by" had been "organized under," there would be no doubt but that the associations meant were those which "are the creation of statutory law," or which "derive from that source some quality, or benefit not existing at the common law."[18]

On the other hand, if the words had been "created or organized in," there would have been no doubt but that it was meant to include common law associations.[19]

What do the words "existing under or authorized by" mean?

In the first place, what is meant by "laws?"

We submit that that word means "statutes."

In the ordinary use of language, "laws" means statutory laws, and it does not include within its meaning the rules of the common law. If all rules and regulations governing human conduct be meant, the appropriate expression is "the

---

[16] Act of Sept. 7, 1916, ch. 451, § 1, 39 Stat. L. 728, Act of July 15, 1918, ch. 152, § 1, 40 Stat. L. 900.

[17] Act of July 2, 1890, ch. 647, § 8, 26 Stat. L. 210.

[18] *Eliot* v. *Freeman*, 220 U. S. 178, 186.

[19] *id.*, p. 187.

[20] *Hecht* v. *Malley*, 265 U. S. 144, 155.

law," not "laws." This association is not included, then, because it does not exist under, nor is it authorized to exist by, any statute.

In the second place, of what is "existing under or authorized by" descriptive,—of "associations" only, or of "corporations" also?

A natural reading of the statute impels us to the belief that the words are descriptive of both. If so, then is there a difference between a corporation "existing under or authorized by" the laws of a state, and one "organized under" those laws? It would seem not. Can these words, then, have any different meaning when applied to "associations?" If so, then the only possible difference is that the expression "organized under" connotes an affirmative statute which grants privileges or powers, upon compliance therewith, while the expression "existing under or authorized by" connotes a passive, declaratory statute, which merely states, in effect, that that which has been lawful shall continue to be so. If the two expressions be essentially the same, then only those associations have been given an entity which have acquired, by statute, a quasi-corporate existence. This, being a voluntary unincorporated association (rec. 2), is not such.

In the last analysis, however, the question is not one of the construction of a statute, divorced from the constitution and its amendments, but is one of power.

We submit that an individual cannot be deprived of his constitutional immunities by so simple a process as saying to him, by statute, that inasmuch as he has associated himself in business with another man as an association, partnership, committee, company, firm, society, or other unincorporated body of individuals, the group is an entity and his documents are now the group's and must be produced upon demand. If this can be done, then the constitution has been limited, by statute, to those individuals who are in business by them-

selves, without associates, for if, by statute, the constitution can be made inapplicable to individuals who are members of an association, then it can be made inapplicable to individuals who are members of the other groups, which are merely different *species* of the same *genus*.

We submit that no such power exists in the legislative branch of the government, and that the statute being procedural only, the *Coronado* case, when correctly analyzed, stands only for the application to an action at law of the familiar equity rule of presence by representation, which has sometimes been applied in association cases.[21]

It would seem that if ever a case existed where the parties were too numerous to be brought conveniently into court, it is a case where there are 450,000 parties, scattered all over the United States and Canada.

*Cessante ratione legis, cessat ipsa lex.*

---

[21] See:

*Beatty* v. *Kurtz*, 2 Pet. 566;

*Iron Molders' Union* v. *Allis-Chalmers Co.* (7 C. C. A.), 166 Fed. 45, 48;

*Spaulding* v. *Evenson*, 149 Fed. 913, affirmed (9 C. C. A.), 150 Fed. 517;

*National Harness Mfgs. Ass'n.* v. *Federal Trade Com.* (6 C. C. A.), 268 Fed. 705.

## Part II.

### Question 2.

**Would the answer to question no. 1 be affected if it appear that the members of such voluntary unincorporated association were all corporations?**

The answer to the second question, which we suggest should be in the affirmative, is to be found in a consideration of that fundamental question which underlies the entire problem, to wit,—To whom do the documents belong?

We predicate our comments upon the assumption that the documents belong to the members of the association, the latter being a nonentity incapable of owning property except in the very loose sense in which we speak of the books of a partnership, meaning thereby only that the particular books in question, the property of the partners, contain a record of the acts and doings of the individuals engaged in a particular enterprise.

On the assumption above stated, the documents would belong to the corporations, and the secretary of the association, necessarily a non-member by the phrasing of the question, would have no proprietary rights therein. In no sense of the word could they be said to be *his* documents. We fail to see that his position would differ in any respect from that of any other custodian of the corporate records.

There can be no doubt about the fact that the documents would be corporate records, whether the custodian were another corporation, a partnership, or an individual."

---

" *U. S.* v. *Invader Oil Corp.*, 5 F. (2d) 715;
*Woodworth* v. *Old Second Nat. Bank*, 154 Mich. 459, 117 N. W. 893;
*Martin* v. *D. B. Martin Co.*, 10 Del. Ch. 211, 88 Atl. 612.

## Part III.

### Question 3.

**Would the fact that the secretary of such voluntary unincorporated association is also a member of such association, entitle him to claim the protection of the fourth or fifth amendment to the constitution, notwithstanding the subpoena called for the papers that belonged to and were in the possession of the said voluntary unincorporated association?**

The answer to this question, which we suggest may be either in the affirmative or in the negative, will depend upon the answer to the question,—Who has the actual custody of the documents?

In an association of individuals and corporations, such as is assumed by the phrasing of the question, both have equal rights to the property.[23] The documents cannot be said to be the property of the corporations any more than they are the property of the individuals, or vice versa. They are, however, the property of each to the same extent that they are the property of the other.[24]

If, then, the documents are in the possession of a corporate member, to whom a subpoena has been issued, the question,

---

[23] *Houston* v. *Dexter & Carpenter*, 300 Fed. 354;
*Quitman Oil Co.* v. *McRee*, 18 Ga. App. 128, 88 S. E. 921;
*Salem-Fairfield Tel. Ass'n.* v. *McMahan*, 78 Ore. 477, 153 Pac. 788;
*Wilson* v. *Carter Oil Co.*, 46 W. Va. 469, 33 S. E. 249;
14a C. J. 293.

[24] *Amusement Syndicate Co.* v. *Marthing*, 108 Kan. 798, 196 Pac. 1058;
*Moore* v. *Hillsdale County Tel. Co.*, 171 Mich. 388, 137 N. W. 241;
*Browning* v. *Cover*, 108 Pa. St. 595.

e submit, should be answered in the negative, for citations
e not necessary to support the statement that one entity,
thout constitutional privilege, cannot plead the constitu-
nal immunity of another entity.

If, however, the documents be in the custody of the indi-
dual, then they are the property of the individual,[25] who
no more bound to produce them than he is to testify
their contents.[26]

## CONCLUSION.

It is respectfully submitted that Brown was correct when
called the attention of the grand jury to the fact that the
sociation was a bodiless trade name, without being, citizen-
p, books, papers or property, unable to travel or to appear
response to a subpoena, and unable to have such a thing
a custodian of books and records which it could not own
possess.

Moreover, assuming that the association is an entity, and
t the documents are therefore its property, by virtue of
at kind of a visitatorial right has the United States ac-
red the privilege of inspecting its books and records?
s question, we submit, presents difficulties of major im-
tance.

We have here no "utter impossibility of doing justice
erwise" than by determining that this, and hence every,
sociation, and hence every partnership, is a legal entity.

---

*U. S.* v. *Brasley*, 268 Fed. 59.

*Ballman* v. *Fagin*, 200 U. S. 186; *Internal Revenue Agent* v. *Sullivan*, 287 Fed. 138.

If the United States desires Brown's books and papers, they are obtainable by means of a subpoena directed to Brown as a witness.

Respectfully submitted,

WEYMOUTH KIRKLAND,
ROBERT N. GOLDING,
*Counsel for Arthur C. Brown.*

# APPENDIX

The following groups, in addition to associations, have been recognized by statutes of the United States:

1. "Committee, any organization or group of persons:"
   Federal Corrupt Practices Act, U. S. C., title 2, sec. 241.

2. "Company:"
   The Insecticide Act, Act of April 26, 1910, ch. 191, § 13, 36 Stat. L. 335;
   Act of August 20, 1912, ch. 308, § 11, 37 Stat. L. 319;
   Act of February 5, 1917, ch. 29, § 1, 37, 39 Stat. L. 874, 897;
   Act of May 20, 1926, ch. 346, § 1, 44 Stat. L. 576;
   White Slave Traffic Act, Act of June 25, 1910, ch. 395, § 7, 36 Stat. L. 827;
   Act of June 30, 1906, ch. 3915, § 12, 34 Stat. L. 772;
   Act of May 22, 1918, ch. 81, § 4, 40 Stat. L. 559;
   R. S. § 3140, Act of February 27, 1877, ch. 69, § 1, 19 Stat. L. 248;
   Act of January 26, 1926, ch. 27, § 703, 44 Stat. L. 97;
   Act of March 23, 1906, ch. 1130, § 7, 34 Stat. L. 86.

3. "Estate:"
   Act of June 2, 1924, ch. 234, § 2, 43 Stat. L. 253.

4. "Firm:"
   Act of February 20, 1905, ch. 592, § 29, 33 Stat. L. 731;
   Act of October 6, 1917, ch. 83, § 4, 40 Stat. L. 386.

5. "Partnership:"

Act of Sept. 8, 1916, ch. 463, § 800, 39 Stat. L. 798;
China Trade Act, Act of Sept. 19, 1922, ch. 346, § 1, 42 Stat. L. 849;
Act of August 24, 1921, ch. 80, § 1, 42 Stat. L. 181;
Act of August 24, 1912, ch. 373, § 12, 37 Stat. L. 502;
Act of June 7, 1924, ch. 346, § 1, 12, 43 Stat. L. 650, 652;
Act of May 20, 1926, ch. 346, § 1, 44 Stat. L. 576;
Act of June 10, 1910, ch. 285, § 5, 36 Stat. L. 465;
Act of March 4, 1923, ch. 262, § 1, 42 Stat. L. 1486;
Act of May 22, 1918, ch. 81, § 4, 40 Stat. L. 559;
R. S. § 3140, Act of February 27, 1877, ch. 69, § 1, 19 Stat. L. 248;
R. S. §1, U. S. C., title 1, sec. 1;
Federal Corrupt Practices Act, U. S. C., title 2, sec. 241;
Act of June 2, 1924, ch. 234, § 2, 43 Stat. L. 253;
The Grain Futures Act, Act of Sept. 21, 1922, ch. 369, § 1, 42 Stat. L. 998;
Act of March 4, 1923, ch. 288, § 11, 42 Stat. L. 1519;
United States Grain Standards Act, Act of August 11, 1916, ch. 313, § 1, 39 Stat. L. 482;
The Naval Stores Act, Act of March 3, 1923, ch. 217, § 1, 42 Stat. L. 1435;
Packers and Stockyards Act, Act of August 15, 1921, ch. 64, § 1, 42 Stat. L. 159;
Act of August 24, 1912, U. S. C., title 7, sec 114-2 (f);
Act of April 30, 1912, ch. 102, § 5, 37 Stat. L. 107;
Act of January 26, 1926, ch. 27, § 703, 44 Stat. L. 97;
United States Cotton Futures Act, Act of August 11, 1916, ch. 313, 39 Stat. L. 476;
Act of October 28, 1919, ch. 85, § 1, 41 Stat. L. 307;
Act of June 7, 1924, ch. 316, § 2, 43 Stat. L. 604;
Act of August 29, 1916, ch. 415, § 42, 39 Stat. L. 545.

6. "Society:"

The Insecticide Act, Act of April 26, 1910, ch. 191, § 13, 36 Stat. L. 335;
Act of August 20, 1912, ch. 308, § 11, 37 Stat. L. 319;
White Slave Traffic Act, Act of June 25, 1910, ch. 395, § 7, 36 Stat. L. 827;
Act of June 30, 1906, ch. 3915, § 12, 34 Stat. L. 772;
Act of October 6, 1917, ch. 83, § 4, 40 Stat. L. 386.

"Trusts:"

The Grain Futures Act, Act of Sept. 21, 1922, ch. 369, § 1, U. S. C., title 7, sec. 2;
Act of June 2, 1924, ch. 234, § 2, 43 Stat. L. 253.

"Two or more persons having a joint or common interest:"

Act of March 4, 1923, ch. 288, § 11, 42 Stat. L. 1519;
Act of August 29, 1916, ch. 415, § 42, 39 Stat. L. 545.

"Other unincorporated body of individuals:"

Act of May 22, 1918, ch. 81, § 4, 40 Stat. L. 559.

"A body of persons, corporate or incorporate:"

Act of February 29, 1888, ch. 17, § 10, 25 Stat. L. 42.